IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.268 OF 2007

Krishna H. Bajaj .. Appellant

Vs.

Sesa Industries Ltd. & Ors. .. Respondents

Mr.D.J.Khambatta, Sr.Advocate with Mr.Z.T.Andhyarujina and Mr.Vivek M. Sharma for the appellant

Mr.I.M.Chagla and Mr.K.K.Bhatt, Sr.Advocate and Mr.Riyaz Chagla i/b Kanga and Co. for the respondents

Mr.C.J.Joy i/b Mr.S.R.Kom, Joint Regional Director (Legal), Ministry of Company Affairs for the Regional Director

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 25TH APRIL, 2007

P.C.:

1. Heard the learned counsel for the parties.

2. The appellant is a shareholder of the respondent company who has preferred an appeal impugning the order passed by the Company Judge on

9.2.07 in the matter of the application filed before the Company Judge in the proceedings where the scheme of amalgamation between Sesa Goa Limited, the transferee Company, and Sesa Industries Limited, the transferor Company is pending for consideration by the Company Judge at Goa.

3. The learned Company Judge after examining the application filed by the appellant shareholder found that the relief sought for by the appellant on various aspects relating to the amalgamation of the two companies cannot be entertained except for what has been sought in prayer clause (g) and (h) and the application came to be dismissed as regards other prayers. We do not find that the impugned order suffers from any error or illegality.

4. The learned counsel for the appellant shareholder insisted upon us that the learned Company Judge should necessarily look into the original inspection reports on the record of Regional Director, Western Region, Government of India, Ministry of Affairs, Mumbai which is in

respect of certain violation of the provisions of the Companies which will have direct bearing on the approval of the scheme for amalgamation sought from the court and further it would not only be in the interest of the shareholders but also in larger public interest.

5. With the consent of the learned counsel for the parties, we sought for the record from the office of the Regional Director, Western Region. We have gone through the two reports. We are of the opinion that the learned Company Judge should take into consideration the said reports before passing any final orders in the matter of approving the scheme for amalgamation of the two companies for considering the purpose of its relevancy, in order to grant approval.

6. The learned counsel for the appellant submitted that the copy of the reports should be made available to them or atleast they should be permitted to inspect the same. This prayer can be made before the Company Judge and it is for the Company Judge to take a decision in the matter.

7. An apprehension was expressed before us that the learned Company Judge has made certain observation in the impugned order while disposing of the application made by the appellant shareholder and that it should not influence the learned Company Judge while disposing of the petition. We find that this apprehension on the part of the appellant is misplaced for the very reason that these observations are not such that they will in any manner cause prejudice to the parties and these observations have been made by way of reasons to be spelt out for disposing of the application and definitely in the said process the court has to arrive at certain prima facie findings which are never taken into consideration while considering the matter on merits at the stage of final disposal and in the present case when the learned Company Judge would take up the matter for approval of the scheme for amalgamation of the two companies. With these observations, we dispose of the appeal. The record made available to us is handed over to the Joint Director, (Legal), Ministry of Company Affairs.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)